his present or prospective loss, if the action were not enforced or restrained. So in the cases in question there seems to be no need to distinguish between rights possessed by the members, considered abstractly as a body, and the rights possessed by them as concrete individuals. To ignore the fiction of separate entity, therefore, and regard the suit as one brought in the corporate name by the members collectively, seems not to "defeat the end" — of convenience — "for which the fiction was invented." On the contrary, a strong reason of convenience for so regarding the suit exists in the consequent avoidance of a multiplicity of separate suits. This has always been one of the objects which Equity has sought to attain; and to attain it by disregarding a legal fiction is in harmony with Equity's habit of neglecting the form and considering the substance.

LEGISLATIVE CONTROL OF MUNICIPAL CONTRACTS. — State legislation declaring what, in the absence of express contract, shall constitute a day's work is generally held constitutional.[1] Several legislatures, however, have attempted to establish prohibitive limitations upon the length of the working-day and the amount of wages. Such laws seem *prima facie* unconstitutional, since they impose a burden on a particular class, take property without due process of law, and restrict the right freely to contract. Only when the public exigency appears considerable are such acts held to be justifiable and constitutional, being then deemed an exercise of the police power of the state. Thus legislative regulation of the labor of women and children, and of employments where exhausting conditions of labor endanger the public, is generally upheld.[2] As regards general conditions of labor, however, the courts have been quick to hold interference unconstitutional.[3] The New York legislature, for example, passed a statute prohibiting any person or corporation, contracting with the state or a municipal corporation, from requiring more than eight hours' work for a day's labor.[4] Indiana also enacted that unskilled labor employed on any public work of the state, counties, cities, and towns shall receive not less than twenty cents an hour.[5] Recent decisions in both states have held that these statutes lie outside the police power and are therefore unconstitutional. *People* v. *Orange, etc., Co.*, 67 N. E. Rep. 129 (N. Y.); *Street* v. *Varney, etc., Co.*, 66 N. E. Rep. 895 (Ind.).

By the use of narrower terms in these statutes, it is conceived that these purposes might have been substantially attained, and upheld on grounds distinct from the police power. When the state regulates the labor contracts of state, county, and municipal governments, it exercises only the right of a contracting party to determine the terms of his bargain. Thus the legislature may obviously prescribe the terms of contracts made by its officers. As regards counties and municipalities, also, in concerns where these governments are mere agents of the state, the legislature may fix the terms of the contract. Highways, bridges, docks, wharves, and railway subways are examples of such contracts.[6] Local concerns, however, such as

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1 Tiedeman, State and Federal Control of Persons and Property § 102.
2 Com. *v.* Hamilton Mfg. Co., 120 Mass. 383; People *v.* Phyfe, 136 N. Y. 554.
3 *In re* Eight Hour Law, 21 Col. 29.
4 Pen. Code § 384 h, subd. 1.
5 Acts 1901, c. 122.
6 People *v.* Detroit, 28 Mich. 228; People *v.* Flagg, 46 N. Y. 401.

county and municipal buildings and the adornment of streets and parks, cannot thus be controlled by the state.[7] The weakness, therefore, of the New York and the Indiana statutes is the breadth of language which includes both sorts of municipal works, local as well as public. A second weakness is that they apply to contracts let before the statute was enacted. In these two particulars, the statutes *prima facie* restrict freedom of contract and impair contract rights; and the courts seem right in holding this interference unjustified by public exigency and therefore unconstitutional.[8] There appears to be no reason why such restrictive provisions should not be constitutional if only they are sufficiently limited by the legislature in the enacting statute.

THE DOCTRINE OF RESPONDEAT SUPERIOR. — It is a fundamental principle of agency that the master is responsible for injuries to third persons caused by the negligence of his servants in the course of their employment. Although this doctrine of *respondeat superior* is well settled, yet it is often difficult to determine when the relation of master and servant exists. It is undoubtedly good law that where the servant of one party is placed merely under the general supervision of another, the relation of master and servant is not established between them.[1] Nor is the original employer absolved from liability.[2] If, on the other hand, control as to details is delegated and exercised, the liability is transferred from the employer to the person exercising such control.[3]

A recent New York case suggests that there may be a third class of cases between the two above. The trains of the Lehigh Company were operating over the tracks of the Erie Railroad Company under a contract which provided that such trains should be subject to the exclusive control of the Erie Company. The plaintiff, while crossing an Erie track on the highway, was injured through the negligent management of a Lehigh train. The court held the Erie Company liable, basing its decision on the doctrine of *respondeat superior*. *Decker* v. *Erie R. R. Co.*, 85 N. Y. App. Div. 13. The decisions in a few similar cases would seem to support this conclusion.[4] It should be observed that while the Lehigh trains were, by the contract, subject to the exclusive control of the Erie Company even as to details, nothing appears to show that the latter was actually exercising that control when the injury occurred. It is submitted that in order to fasten the liability upon the Erie Company, it should not only have had the right to control the employees of the Lehigh Company, but should also have been in the actual exercise of that right. In no true sense could the crew of the Lehigh train be said to be the servants of the Erie Company. They were employed by the Lehigh Company, were acting for its benefit and in accordance with its orders. Only by the intervention of orders from the Erie Company, would they become the servants of the latter for the purposes of liability. If this argument be sound, it would follow that the decision is an unfortunate one.

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[7] Dillon, Munic. Corp. § 71.
[8] See also Cleveland *v.* Clements Bros. Constr. Co., 65 N. E. Rep. 885 (Ohio).

[1] Langher *v.* Pointer, 5 B. & C. 547.
[2] Coggin *v.* Central R. R. Co., 62 Ga. 685.
[3] Brown *v.* Smith, 86 Ga. 274.
[4] Atwood *v.* Chicago, R. I. & P. R. Co., 72 Fed. Rep. 447.